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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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EXAMINER

CORBIN, ARTHUR L

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 10/18/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

TC-11

Office Action Summary

Application No.

09/54,922

Applicant(s)

ROUSSEL ET AL

Examiner

ARTHUR L. CORBIN

Group Art Unit

1761

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- ☒ Responsive to communication(s) filed on 7-30-02
- ☒ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-34 is/are pending in the application.
- ☐ Of the above claim(s) 29-34 is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-28 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement

Application Papers

- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- ☐ All ☐ Some* ☐ None of the:
 - ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____
 - ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____ ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892 ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948 ☐ Other _____

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DETAILED ACTION

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-28^{are} rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1-28 are indefinite since it is not clear how ~~to~~^{are} microscopic fibers (claim 1, line 10) become microscopic fibers (claim 1, line 12), as set forth in paragraph no. 7, Paper No. 9.

There is no antecedent basis in claim 1 for "the extruded fibrous material" (claim 1, lines 8-9).

Claim 7 is indefinite as to scope in reciting a genus ("textured") and species thereof ("usually by addition of ~~an~~^{air}") in a single claim as set forth in paragraph no. 7, Paper No. 9. Claim 24 is

indefinite is not reciting how the dynamic method occurs. Claim 27 is indefinite since it ~~is~~^{is} not

~~clear~~ how the color can be added to raw forms "and/or" after the cooking step. (There is no antecedent basis in claim 7 for "melting ~~the~~ material" (claim 25, line 2).) Corrections are required.

3. Claims 1, 2, 7, 8, 12, and 23 ~~and~~^{to} 25 are objected to because of the following

informalities: In claims 1 and 2, lines 4, "incorporating" should be changed to "including". In

claim 1, lines 10 and 12 and claim 7, line 6, in an " should be changed to " on an". In claim 12,

line 3, "the" should be canceled. In claim 24, line 3, the first comma should be canceled. In

claim 25, line 3, "a" should be changed to "the". In claim 8, line 9, "an other" should be changed

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to "another". In claim 23, line 2, "a" should be changed to "the". Appropriate correction is required.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-28 are also rejected under 35 U.S.C. 103(a) as being unpatentable over T'ueh.

Applicant is referred to paragraph no.5, Paper No. 9.

6. Applicant's arguments filed July 30, 2002 have been fully considered but they are not persuasive. Texturization and extrusion cooking (claim 1) are method limitations^s entitled to no patentable weight in applicant's product claims and are not recited in claim 6, as applicant ^{believes,} ~~is~~.

The paste material and fibrous material in T'ueh are substantially equivalent to applicant's paste and fibrous material, especially since vacuum mixing only occurs in Example II of T'ueh and not in any other example or in any claim of T'ueh.

Applicant's comment that T'ueh does not teach texturizing the paste by ^{aeration} ~~mixing~~, as in claim 7, is not convincing since ^{aeration} ~~mixing~~ is merely alternative to homogenizing or ^{emulsification} ~~mixing~~ in claim 7, and these two techniques are conventional in preparing^{ing} meat or fish paste. Additionally, emulsifying ^{will naturally} ~~mixing~~ occur during the finely comminuting^{ing} in T'ueh (col. 2, lines 10-15).

7. Claims ²⁹ ~~28~~-34 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a non elected invention, there being no allowable generic or linking claim.

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Applicant timely traversed the restriction (election) requirement in Paper No. 8. Also, see the last sentence in paragraph no.1, Paper No.9.

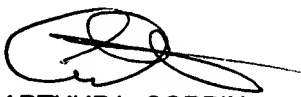
8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arthur Corbin whose telephone number is (703) 308-3850. The examiner can normally be reached on Tuesday-Friday from 10:00 a.m. to 7:30 p.m. The examiner can also be reached on alternate Mondays .

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano , can be reached on (703) 308-3929. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

Corbin/sp

October 17, 2002


ARTHUR L. CORBIN
PRIMARY EXAMINER
0-17-52